its serviceability. The fact that when thrown it misfires because for instance the explosive is damp, is immaterial, *Chong Kim Seng* v. *Public Prosecutor.*[2]

The learned judge's decision in the instant case is, unbeknown to him, supported by the decision of the Privy Council in *Liew Sai Wah* v. *Public Prosecutor,*[3] a case cited for the first time only before us. There six hand grenade bodies found on the accused were bodies of British 36M grenades; they were not bodies of drill or dummy grenades; grenades of this type were normally filled with an explosive called Baratol; no evidence was given at the trial proving that they contained explosive; and they were not complete grenades as they lacked levers, safety pins, detonators and base plugs. At the trial the accused contended that the grenade bodies were not ammunition within section 2 of the Act. The learned judge and subsequently the Federal Court ruled that they were. The Privy Council however ruled otherwise.

After observing the difference in the definition in the Act of ammunition and fire-arm and explosive Their Lordships said at page 2.

"If it had been intended that the definition of ammunition should include any component part of a grenade, that could easily have been stated. The omission to do so is not only significant when compared with the definition of explosive and fire-arm. In 1938 the Malayan Corrosive and Explosive Substances and Offensive Weapons Ordinance was made. In that Ordinance explosive substance was defined to include any bomb or grenade 'and any part of such bomb, or grenade....'"

Their Lordships' conclusion was in application of the general principle that the "Internal Security Act is a penal Act and must be construed strictly" (page 2). They quoted with approval this *dictum* of Lord Simonds in *L.N.E.R. Co.* v. *Berriman,*[4] at page 313:

"A man is not to be put in peril upon an ambiguity, however much or little the purpose of the Act appeals to the predilection of the court."

But as already stated, the grenade bodies in *Liew Sai Wah*[3] did not only lack explosive; they also lacked levers, safety pins, detonators and base plugs. Does not the fact that the grenades in the instant case have the four parts already referred to (striker, percussion cap, safety fuse and detonator) make a difference? Encik Lamin for the Public Prosecutor argued that it does and that it makes the casings with the parts grenades within the Act. With respect we do not agree. Even if the detonator is an explosive within the meaning of the Act, the presence of this component does not make a hand-grenade which is devoid of any explosive substance ammunition for the purpose of the charge facing the respondent. *Liew Sai Wah*[3] makes that clear.

Being in agreement with the learned trial judge's conclusion, we would dismiss this appeal.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

PUBLIC PROSECUTOR v. OO LENG SWEE & ORS.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) & Chang Min Tat F.J.J.) January 8 & 22, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 26 of 1980]

Criminal Law and Procedure — Sentence — Charge of trafficking in dangerous drugs — Death sentence substituted for that of life imprisonment — Dangerous Drugs Ordinance, 1952, s. 39B(1)(a).

Misuse of Drugs — Trafficking — Manufacturing heroin in large quantity — Death sentence.

The respondents had pleaded guilty to a charge of trafficking in dangerous drugs. They had been caught red-handed in the processing of a large quantity of heroin. The learned trial judge took into consideration that the respondents were first offenders and had pleaded guilty and he sentenced them to life imprisonment. The Public Prosecutor appealed.

Held: the appellants should have been sentenced to death, notwithstanding that they were first offenders and had pleaded guilty, as they were engaged in manufacturing heroin in a systematic and in a big way.

Case referred to:-

(1) *Loh Hock Seng* v. *Public Prosecutor* [1980] 2 M.L.J. 13.

[The following cases were also cited in argument:- *Robert Hugh Fraser* (1967) 51 C.A.R. 470; *Frank Abiodun Macauley* (1968) 52 C.A.R. 230, 232; *San Shun Li* (1973) 57 C.A.R. 704, 707-8].

FEDERAL COURT.

Lamin bin Haji Mohamad Yunus (Deputy Public Prosecutor) for the appellant.

R. Rajasingam for the first respondent.

Jag-Jit Singh for the second respondent.

Karpal Singh for the third respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): We allowed this appeal by the Public Prosecutor against the inadequacy of the sentence passed on each of the three accused, and did a very unusual thing. For the sentences of life imprisonment we substituted sentences of death. To the best of our knowledge, this is only the second time this court and our predecessors, the Court of Appeal, have done so in the last 32 years. We did so for the following reasons.

But first, the facts.

On April 19, 1977, at about 6.10 p.m. a police party led by Acting A.S.P. Tang Yau Hie raided a house, 6 Lorong Enam, Jalan Bunga Tanjong, Kulim. They entered through the back door which happened to be ajar. There they saw the three accused squatting and facing five frying pans placed on five burning charcoal stoves. A fan was blowing. The contents of the pans were being dried. The accused were arrested.

Various articles were seized by the police — among which were 3,441 grammes of morphine and 2,880.3 grammes of heroin, making a total of 6,321.3 grammes of *dadah* (deleterious drugs), one of the biggest hauls ever captured.

Many of the other articles appeared to have been used in the manufacture of *dadah;* and so on the

following day at 10.45 a.m. the Government Chemist visited the house at the request of and accompanied by the A.S.P. The Chemist examined the premises and dusted the floors and swabbed the walls for trace of narcotic drugs and other chemicals. He noted the presence of morphine, heroin and caffeine in the dust collected from the floor of the wall. From the dusting and swabbing of the wall in another room he detected traces of morphine. He found traces of morphine in a plastic sheet, a towel and a small blue plastic container. Another plastic container was found in the space above the two rooms and this container had in it some hydrochloric acid and a spoon with traces of heroin.

The steps leading down to the kitchen and the floor and wall alongside it also had traces of heroin. On the floor there was also found sodium carbonate.

The room adjacent to the kitchen was littered with charcoal and ash. Traces of heroin were noted on the walls and floor.

On April 25, 1977, the Chemist examined at the Kulim police station a car which had been seized from the premises. He found some newspapers in the boot, which he dusted; and sodium carbonate, caffeine and heroin were present in the newspapers and the boot compartment.

To cut a long story short, from all this the Chemist was of the opinion that the evidence was consistent with the premises having been used for the processing of heroin from morphine.

In due course the accused were jointly charged with trafficking in dangerous drugs, contrary to section 39B(1)(a) of the Dangerous Drugs Ordinance, 1952, an offence punishable under subsection (2) of the same section, with either death, or life imprisonment and in the latter case with whipping also.

Such a clear case against the accused, caught red-handed in the processing of heroin, could have been dealt with expeditiously, but regrettably, like quite a number of criminal cases in the Alor Star High Court, it was not disposed of until late; in this case three years later, on June 5, 1980. That day each of the accused pleaded guilty, was convicted and sentenced to life imprisonment, and the first and third accused also to six strokes.

The Public Prosecutor appealed against the sentences. The only question before us was: should the sentences be enhanced?

We think that this is an eminently proper case where sentence of death should have been passed.

It is true that all the accused are first offenders. But drug addiction has been rampant for many years, and has reached very serious proportions. It is notorious that many addicts are young persons, many of them innocent children of decent families. Many addicts because of their craving are driven to commit crimes, in order to acquire money desperately needed to buy *dadah*, and almost daily we read reports of young men on motor-cycles snatching ladies' handbags in town in broad daylight — or worse. Many of these addicts are eventually destroyed by the deleterious effects of the drugs which they are not able to shake off, but before that lamentable event they go through living death.

The learned trial judge in a careful judgment explained why he refrained from sentencing the accused to death and took everything in favour of the accused into account, in particular the fact that each of the accused had pleaded guilty. We agree that a plea of guilt should be taken into account in favour of the accused. But he had failed to take into account the very pertinent fact that the accused were all caught in the manufacture of heroin.

In our view these accused should have been sentenced to death, notwithstanding that they were first offenders and had pleaded guilty — because they were engaged in manufacturing and manufacturing in a systematic and a big way (they admitted they were paid $1,200 a day); and without manufacturers, there would not have been traffickers and pushers; and without any of these people engaged in this deadly business there would have been no or fewer consumers — to save whom, parents and relatives suffer mental anguish and Government spend time and money which could very well be expended in developing the economy and increasing the prosperity of the country.

It was said that this case is less serious than *Loh Hock Seng* v. *Public Prosecutor*.[1] There this court for the first time enhanced the sentence (life imprisonment) passed on a person (the second appellant there) found guilty of trafficking in heroin and substituted therefor a sentence of death. The second appellant in that case had not pleaded guilty and had several previous convictions for armed robbery, house-breaking and theft and one for possession of heroin. All that is true, but the accused here were, as already stated, engaged in manufacturing and the quantity involved was over 6,000 grammes which, as the learned Deputy submitted before us, was enough to supply 63,000 first-time drug takers paying $10 per shot in Kuala Lumpur and more elsewhere. This is four times the quantity in *Loh's* case which was 1,550.1 grammes.

Finally, we reiterate what was said in *Loh's* case at page 14: that sentencing in a criminal case must of course bear some relation to the particular circumstances of the offender as well as to the particular circumstances of the offence; that notwithstanding the several convictions obtained for drug trafficking, this type of offence is still rampant and provides an impetus to related offences; that drug traffickers are engineers of evil and pedlars of death; and that in view of the continuing upsurge in indulgence in *dadah* and in offences connected with it, the time has come for more vigorous deterrence to be brought to bear on drug traffickers, so that those who are engaged in this evil and highly lucrative business should be persuaded to desist and repent, knowing that if they were caught, more probably than not there would be one and only one punishment for them, commensurate with the great damage done by them to society.

Order accordingly.

Solicitors: *R. Rajasingam & Co.; Jag-Jit Singh & Co.; Karpal Singh & Co.*